

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANTHONY J. BOTEILHO,

Petitioner,

v.

SCOTT FRAKES and ROB MCKENNA,

Respondents.

No. CV-11-019-JTR

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Before the Court is Magistrate Judge Imbrogno's June 27, 2013 Report and Recommendation to Grant Respondent's Motion to Dismiss All Claims with Prejudice. ECF No. 38. Petitioner appears pro se. Assistant Attorney General Ronda D. Larson represents Respondents. On October 16, 2013, Petitioner filed objections to the Report and Recommendation. ECF No. 48. Petitioner also filed a new motion for appointment of counsel. ECF No. 49.

The objections raised by Petitioner are as follows: 1) the Court erred by construing Respondent's Answer, ECF No. 37, as a motion to dismiss; 2) the Report and Recommendation's "Factual Background" was erroneously established in deprivation of Petitioner's constitutionally protected guarantees; 3) the Report and Recommendation finding that Petitioner is not entitled to an evidentiary hearing is erroneous; 4) the Report and Recommendation

1 finding that Petitioner's claims 1, 7, 11, and 12 were unexhausted is
2 related to Petitioner's claims of ineffective assistance of counsel
3 and was thus erroneous; 5) the Report and Recommendation finding on
4 the merits of Petitioner's claims 2, 3, and 4 is erroneous for the
5 same ineffective assistance of counsel reasons Petitioner previously
6 raised; 6) the Report and Recommendation finding on the merits of
7 Petitioner's claims 5 and 9 is erroneous; 7) the Report and
8 Recommendation finding on the merits of Petitioner's claim 6 (due
9 process and speedy trial) is erroneous; 8) the Report and
10 Recommendation finding on the merits of Petitioner's claim 8 (breach
11 of plea agreement) is erroneous because there was no discussion at or
12 prior to sentencing of a term of community custody; and 9) the Report
13 and Recommendation finding on the merits of Petitioner's claim 10 is
14 erroneous because Petitioner did not receive the minimum due process
15 requirements. ECF No. 48 at 12-28.

16 In addition to requesting the appointment of counsel, ECF No.
17 49, Petitioner asks this Court to: 1) reject the Report and
18 Recommendation; 2) order an evidentiary hearing to collect additional
19 evidence and clarify disputed facts; 3) provide immediate injunctive
20 relief to enjoin the state and DOC from placing Petitioner under the
21 restraints of "community custody" upon his release from prison on
22 November 5, 2013; and 4) grant Petitioner leave to amend and
23 supplement his petition, ECF No. 48.

24 Having reviewed the June 27, 2013 Report and Recommendation and
25 Petitioner's objections thereto, the Court finds the Magistrate
26 Judge's findings are correct. Therefore, the Court adopts the Report

1 and Recommendation in its entirety and dismisses this action with
2 prejudice.

3 Accordingly, **IT IS HEREBY ORDERED:**

4 1. The Court **ADOPTS** Magistrate Judge Imbrogno's Report and
5 Recommendation, **ECF No. 38**.

6 2. Respondent's Motion to Dismiss, **ECF No. 37**, is **GRANTED**.

7 3. Petitioner's Petition for Writ of Habeas Corpus, **ECF No.**
8 **18**, is **DENIED and DISMISSED WITH PREJUDICE**.

9 4. Petitioner's Motion for Appointment of Counsel, **ECF No. 49**,
10 is **DENIED**.

11 5. All hearings and other deadlines are **STRICKEN**.

12 6. This file shall be **CLOSED and JUDGMENT** shall be **ENTERED** for
13 the Respondent.

14 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
15 Order and provide a copy to Petitioner and counsel for Respondents.

16 **DATED** this 30th day of October 2013.

17
18 s/ Edward F. Shea

EDWARD F. SHEA

19 Senior United States District Judge
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